

AG to justices: Rethink charter-school ruling, Running Start at risk

Originally published September 11, 2015 at 1:22 pm Updated September 14, 2015 at 7:21 am

State Attorney General Bob Ferguson says that the ruling may call into question other programs, too, such as Running Start to some technical schools.

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Washington Attorney General Bob Ferguson will ask the state Supreme Court to reconsider its decision, [released a week ago](#), that struck down Washington's charter-school law as unconstitutional.

His office released a statement Friday saying that the 6-3 decision "also unnecessarily calls into question the constitutionality of a wide range of other state educational programs." He listed Running Start as an example, as well as skills centers that provide career and technical education to high-school students.

The details of Ferguson's motion won't be available until it's filed with the Supreme Court, which can be no later than Sept. 24, his office said.

Ferguson discussed his decision to file with Gov. Jay Inslee on Friday morning, according to the statement.

Charter-school advocates from around the country have called for a legal challenge, and [also have pressured Inslee](#) to call a special legislative session to give lawmakers a chance to rescue the schools.

Inslee sent a letter to legislators on Friday saying he will not do that.

He said he may call a special session in November to address school funding, given that lawmakers are racking up \$100,000 a day in fines ordered by the state Supreme Court.

The court [imposed the fines last month](#) after lawmakers failed to provide a complete plan to raise public-school funding to the level required by the court in a separate decision, known as the McCleary case.

The court urged a special session to finish that plan, but Inslee instead announced Friday that he has persuaded a bipartisan group of lawmakers from both houses of the Legislature to try to reach a deal.

The work group will hold its first meeting later this month, and Inslee said he wants them to concentrate on the broader funding questions raised by the McCleary ruling, not debate charter schools.

Voters approved charter schools in 2012 by narrowly passing an initiative that was on the November ballot.

Until Friday, Washington was among the 43 states and the District of Columbia that allow charter schools. Charters are publicly funded, but privately operated schools, with more freedom to innovate, but subject — at least on paper — to swifter closure if they fail academically or financially.

[The high court's ruling](#) — the first in the country striking down a state charter-school law in its entirety — says charter schools aren't "common schools" because they are governed by appointed rather than elected boards.

Therefore, charter schools aren't entitled to public money exclusively intended for "common schools" and can't tap the state's general fund either, because the state can't tell which dollars come from which sources, the court ruled.

That's raised questions about whether the general fund can be used to pay for other educational programs that may not meet the "common school" definition.

"There's a general sense of confusion about how far reaching is this decision," said Nathan Olson, spokesman for the state Office of Superintendent of Public Instruction.

[Running Start](#), for example, is a 25-year-old program paid out of the general fund that allows high-school students to earn both high-school and college credit by taking classes at state community colleges, which are run by trustees appointed by the governor. The program is in 458 schools and serves almost 20,000 students, according to the superintendent's office.

Justice Mary Fairhurst mentioned Running Start by name in her partial dissent of the charter-school ruling.

"Indeed, programs, such as Running Start, that are not under the control of local voters and are thus not common schools, receive support through the \$7.095 billion appropriation for public education," Fairhurst wrote.

Chief Justice Barbara Madsen's opinion doesn't address Running Start explicitly, but [a court filing from the plaintiffs](#) argues that such programs would pass constitutional muster because they add to the basic education provided by common schools.

"Nothing prevents the Legislature or school districts from using unrestricted funds to support these supplemental programs and services," the plaintiff's attorneys wrote.

“Moreover, most of the identified programs and services are subject to the oversight of either school districts or the Superintendent or both.”

Ferguson also raised concerns about the state’s 14 skills centers — regional schools that serve high-school students from multiple school districts and may come under the purview of a single district’s school board or under an agreement among school districts.

[The centers](#) focus on vocational programs that give students industry-specific training.

Chief Justice Madsen cited a 1939 Washington state Supreme Court decision that a vocational rehabilitation program operated by a state board improperly used tax dollars reserved for common schools.

Justice Fairhurst noted, however, that following that decision, the Legislature used the general fund to pay for the program instead. Fairhurst argued that although charter schools are not common schools, they could be funded the same way without violating the state constitution.

Friday’s ruling, she wrote, taken to its “full logical extent ... would mean that any expenditure from the general fund would be unconstitutional unless it was for the support of common schools.”

The court doesn’t hear oral arguments on reconsideration motions, and doesn’t even have to ask for new arguments from the attorneys. There’s also no timeline for making a decision. If the court grants the motion, it could modify the opinion or take other unspecified actions.

Ferguson may want to tread carefully, according to [“Washington Practice,”](#) a multivolume book widely used by lawyers.

“This is a delicate task — suggesting to the court that it should change a decision already reached by the court, while at the same time maintaining the proper tone of respect for the court, ” the book says. “A direct, frontal attack on the court’s decision is one possible approach, but usually a more subtle approach is more likely to achieve the desired result.”

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